IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 27185 of 2007(J)

PETITIONER:

SYAMALA RAMANATHAN, AGED 59 YEARS,
W/O.RAMANATHAN PILLAI, 'ATHIRA',
THAZHAKKARA.P.O., MAVELIKKARA,
ALAPPUZHA - 690 570.

BY ADV. SRI.V.PHILIP MATHEWS

RESPONDENTS:

1. THAZHAKKARA GRAMA PANCHAYATH
(SPECIAL GRADE) KALLIMEL P.O., MAVELIKKARA,
ALAPPUZHA - 690 570 REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
THAZHAKKARA GRAMA PANCHAYATH(SPECIAL
GRADE) KALLIMEL P.O., MAVELIKKARA,
ALAPPUZHA - 690 570.

3. THE DEPUTY GENERAL MANAGER (ADMN)
C/O.GENERAL MANAGER, B.S.N.L.,
ALAPPUZHA - 11.

4. OOMMAN NINAN, S/O.NINAN, KANKALIL
MALAYIL, THAZHAKKARA MURI, THAZHAKKARA VILLAGE,
MAVELIKKARA TALUK.

5. MURALI THAZHAKKARA, S/O.KESAVAN ASARY,
VALIYA AYYATHU, -DO-

6. JOSEPH K.J., S/O.OUSEPH MATHAI,
KATTUPARAMBIL KARTHIKA,
-DO-

R3 BY ADV. SRI.C.S.RAMANATHAN, SC, BSNL
R4,R5 & R6 BY ADV.SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.P.C.ANIL KUMAR
R1-R2 BY ADV.SRI.RASHEED C.NOORANAD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.27185 of 2007

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Dated: 28th November, 2007

JUDGMENT

Considering the lukewarm stand of the B.S.N.L., I do not think that this court will be justified in exercising powers of judicial review for interfering with Ext.P4. The challenge against Ext.P4 initiated by the petitioner who was yet to arrive into a firm contract with the B.S.N.L. cannot be accepted. Going by the submissions of Mr.C.S.Ramanathan, Counsel for the B.S.N.L., the B.S.N.L. though interested in the property belonging to the petitioner, is not prepared to go to the extent of challenging Ext.P4 on its own. It is duty of the petitioner under Ext.P1 to construct and hand over the site to the B.S.N.L. so as to enable the B.S.N.L. to instal the mobile tower. If the petitioner is unable to do that, the B.S.N.L. will look for an alternate site, so submits Mr.Ramanathan. The impression which I gather from the submissions of the counsel for the B.S.N.L. is that B.S.N.L. is not prepared to the extent of preferring an appeal against Ext.P4 on its own. This being the stand, Ext.P4 order is not liable to be interfered with at the instance of the petitioner who does not qualify now as a person aggrieved. Moreover, going by the reply which was submitted by the petitioner before the Panchayat in

response to the stop memo issued by the Panchayat, it is not the responsibility of the petitioner to put up the mobile tower and it is B.S.N.L.'s responsibility to put up the mobile tower and to ensure that necessary safety measures are taken. In other words, it is the B.S.N.L. who could be aggrieved by Ext.P4. B.S.N.L. may be aggrieved but not to the extent of challenging Ext.P4 on its own. Gauging Ext.P4 by the parameters applicable to exercise of powers of judicial review, also it is not possible to say that Ext.P4 decision has been taken in total disregard of relevant considerations. After all this court does not sit in appeal over Ext.P4. The result therefore is that the Writ Petition fails and the same will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**